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8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-113

13 **LELAND CHUNG HONG TOY**
14 **7601 Stoneridge Drive**
15 **Pleasanton, CA 94588**
16 **Optometrist Certificate of Registration No.**
17 **6128**

A C C U S A T I O N

Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Mona Maggio ("Complainant") brings this Accusation solely in her official capacity
21 as the Executive Officer of the State Board of Optometry ("Board"), Department of Consumer
22 Affairs.

23 2. On or about August 31, 1976, the Board issued Optometrist Certificate of
24 Registration Number 6128 to Leland Chung Hong Toy ("Respondent"). The Optometrist
25 Certificate of Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on March 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 3110 of the Code states, in relevant part:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

"(b) Gross negligence.

...

"(d) Incompetence.

...

"(q) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

...

"(y) Failure to refer a patient to an appropriate physician in either of the following circumstances:

"(1) Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.

..."

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a

1 disciplinary action during the period within which the license may be renewed, restored, reissued
2 or reinstated.

3 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
4 administrative law judge to direct a licensee found to have committed a violation or violations of
5 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
6 enforcement of the case.

7 FACTUAL BACKGROUND

8 7. On or about May 12, 2008, patient S.M.¹ presented to an ophthalmologist for an eye
9 examination after seeing "floaters" and "flashes".

10 8. On or about June 6, 2008, S.M. presented to Respondent for a diabetic retinopathy
11 screening. S.M. has been a diabetic since 1988. S.M. reported to Respondent that he was seeing
12 "floaters" and "flashes" in his left eye.

13 9. Respondent performed a best corrected visual acuity test on S.M. and documented
14 that S.M.'s visual acuity in his left eye was 20/30. Respondent did not investigate or determine
15 the cause of S.M.'s reduced visual acuity in his left eye.

16 10. Respondent also performed a biomicroscopy on S.M. and documented that there were
17 "few pigmented cells" in the vitreous of S.M.'s left eye.

18 11. Next, Respondent performed a binocular indirect ophthalmoscopy on S.M. by dilating
19 his eyes. Under "Macula", Respondent documented the following: "OD one dot heme; OS clear
20 & flat."² Under "Retina", Respondent noted the following: "OD dot heme in 2 quadrants; OS dot
21 heme in one quadrant."

22 12. Respondent did not perform pupil testing, a visual field screening, or scleral
23 indentation on S.M.

24
25
26 ¹ Initials are used herein to protect the patient's privacy. The patient's identity will be
27 provided pursuant to a proper discovery request.

28 ² "OD" refers to the right eye. "OS" refers to the left eye. "Heme" means hemorrhage.

13. Under “Assessment”, Respondent documented that S.M. suffered from Diabetes Mellitus Type 2 with mild Nonproliferative Diabetic Retinopathy, that he had a cataract in his right eye, and that he had a Posterior Vitreous Detachment (“PVD”) in his left eye.

14. Respondent did not document whether there were any holes or tears in S.M.'s retinas, or whether S.M.'s retinas were detached. Nor did Respondent refer S.M. to a retinal specialist after finding pigmented cells and a PVD in S.M.'s left eye. The presence of pigmented cells and a PVD indicates that the patient's retina is either torn or detached.

15. At the end of the examination, Respondent ordered S.M. to return in one year for routine diabetic retinopathy screening. He also advised S.M. that if there was “[a]ny change in flashes or floaters”, S.M. should contact him or another doctor “immediate[ly].”

16. On or about August 22, 2008, S.M. wrote an email to Respondent in which he stated the following: "I am continuing to have problem with my left eye". . . . Recently, I am seeing a lot of tiny black dots and also like lightning flashes and hazy vision with some darkness in one corner of my left eye."

17. On or about August 23, 2008, S.M. presented to an ophthalmologist who diagnosed him with retina detachment macular off in the left eye.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

18. Respondent is subject to disciplinary action under section 3110, subdivision (b), of the Code for gross negligence in that he failed to (1) perform pupil testing, a visual field screening, and scleral indentation on S.M. to determine whether S.M.'s left retina was torn or detached; (2) determine the cause of S.M.'s decreased visual acuity in his left eye; (3) determine that S.M.'s left retina was torn or detached after finding pigmented cells and a PVD in S.M.'s left eye; and (4) immediately refer S.M. to a retinal specialist after finding pigmented cells and a PVD in S.M.'s left eye. The circumstances of Respondent's gross negligence are set forth above in Paragraphs 9, 10, 12, 13, and 14.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Incompetence)**

3 19. Respondent is subject to disciplinary action under section 3110, subdivision (d), of
4 the Code for incompetence in that he failed to (1) perform pupil testing, a visual field screening,
5 and scleral indentation on S.M. to determine whether S.M.'s left retina was torn or detached; (2)
6 determine the cause of S.M.'s decreased visual acuity in his left eye; (3) determine that S.M.'s
7 left retina was torn or detached after finding pigmented cells and a PVD in S.M.'s left eye; and
8 (4) immediately refer S.M. to a retinal specialist after finding pigmented cells and a PVD in
9 S.M.'s left eye. The circumstances of Respondent's incompetence are set forth above in
10 Paragraphs 9, 10, 12, 13, and 14.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Maintain Adequate and Accurate Records)**

13 20. Respondent is subject to disciplinary action under section 3110, subdivision (q), of
14 the Code in that he failed to document whether there were any holes or tears in S.M.'s retinas, or
15 whether S.M.'s retinas were detached. The circumstances of this omission are set forth above in
16 Paragraph 14.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Failure to Refer Patient to Appropriate Physician)**

19 21. Respondent is subject to disciplinary action under section 3110, subdivision (y)(1), of
20 the Code in that he failed to refer S.M. to a retinal specialist after finding evidence during his
21 examination that S.M.'s left retina was torn or detached. The circumstances of this conduct are
22 set forth above in Paragraph 14.

23 **PRAYER**


24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the State Board of Optometry issue a decision:

26 1. Revoking or suspending Optometrist Certificate of Registration Number 6128 issued
27 to Leland Chung Hong Toy;
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1 2. Ordering Leland Chung Hong Toy to pay the State Board of Optometry the
2 reasonable costs of the investigation and enforcement of this case pursuant to Business and
3 Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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7 DATED: 12.02.2010


MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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